



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 19, 1988

Honorable Jim D. Rudd
Texas House of Representatives
420 W. Main
Brownfield, Texas 79316

LO-88-57

Dear Representative Rudd:

This letter is in response to your request which was hand-delivered to the Opinion Committee on May 16, 1988. You ask whether the spouse of a school trustee in the Whiteface Public Schools may serve on the board of trustees of that district. The inquiry involves two issues: the state nepotism law and district policy.

With regard to state law, the nepotism statute, article 5996a, V.T.C.S., does not itself prohibit the spouse from continuing to teach so long as she will have been continuously employed by the district for more than six months at the time her husband is elected to the board.

The district's policy is considerably stricter than the state law. It would seem to prohibit renewal of the spouse's contract at any time after her husband assumes a position on the board of trustees. However, unlike the state nepotism law, there is no penalty attached to any potential violation of the Board's policy, nor could there be, since a school district is not empowered to enact criminal statutes.

Therefore, the board itself would be in a position to determine whether to renew, or not renew, the spouse's contract. If the board wants to renew the contract, several options are available. The board could: (1) abrogate its nepotism policy, in so far as it is more restrictive than state law; (2) choose to ignore it in this instance; or (3) declare that a departure from the policy is called for in this particular case, in view of the length of the spouse's prior employment with the district. On the other hand, the board could choose to honor its policy and decline to renew the spouse's contract while her husband serves on the board. The matter is strictly within the board's discretion, but as the policy now literally reads, it prevents renewal of the teacher's contract.

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If you have any further questions, please do not
hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rick Gilpin". The signature is fluid and cursive, with a large, stylized "G" and a long, sweeping underline.

Rick Gilpin, Chairman
Opinion Committee
Attorney General of Texas

RG/er
ID# 3585